

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

WERNER KARL HEGEMANN.

Plaintiff,

V.

M&M AMERICAN, INC.,

Defendant.

CASE NO. 2:18-CV-00179-D-BR

**DEFENDANT’S OBJECTIONS TO EXHIBITS AND DESIGNATED
VIDEOTAPED DEPOSITION TESTIMONY DISCLOSED
IN PLAINTIFF’S RULE 26(a)(3) DISCLOSURES**

TO: Plaintiff, by service upon his attorneys of record, Mr. Richard Bowen, Law Office of Richard K. Bowen, P. O. Box 119, Springfield, VT 05156 and Mr. Warren Armstrong, 11551 Forest Central Drive, Forest Central II, Suite 300, Dallas, TX 75243

Defendant makes the following objections pursuant to Rule 26(a)(3) to the following exhibits and designated videotaped deposition testimony:

<u>Plaintiff's Exhibits</u>	<u>Description</u>	<u>Objection</u>
PX-001	Police report – Texas Department of Transportation	No objection.
PX-002	Defendant Ratavius Dandre Buchanan's driver's license (M&M00038)	No objection.
<u>Photographs</u>		
PX-003	11 property damage photographs (produced by plaintiff)	No objection.
PX-004	8 property damage photographs (M&M00002 and M&M00004-00010)	No objection.
<u>Medical/Billing Diagnostic Imaging Records</u>		
PX-005	Summary of Medical Expenses (paid and	Objection. Hearsay, Rule 802, Federal Rules of Evidence.

	outstanding)	
PX-006	Pertinent medical records	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-007	Billing records from Vega Volunteer Fire & Rescue 4/24/16	No objection.
PX-008	Medical records from Vega Volunteer Fire & Rescue 4/24/16	No objection.
PX-009	Billing records from Putney Family Healthcare 4/24/16-11/27/18	No objection.
PX-010	Medical records from Putney Family Healthcare 4/24/16-4/27/17	No objection.
PX-011	Billing records from Brattleboro Memorial Hospital 04/24/16 – 11/27/18	No objection.
PX-012	Billing records from Brattleboro Memorial Hospital 11/27/18 – 08/28/19	Defendant objects to this exhibit as it has not yet been provided to Defendant. Once it has been produced, Defendant may or may not have an objection to the exhibit.
PX-013	Medical records from Brattleboro Memorial Hospital 06/15/16 – 04/26/18	No objection.
PX-014	Medical records from Brattleboro Memorial Hospital 04/26/18 – 07/29/19	No objection.
PX-015	Diagnostic Imaging Films from Brattleboro Memorial Hospital 01/02/18 – 04/26/18	No objection.
PX-016	Diagnostic Imaging Films from Brattleboro Memorial Hospital 04/26/18	Defendant objects on the basis that this exhibit is duplicative of Plaintiff's Exhibit PX-015.
PX-017	Billing records form Northwest Texas Healthcare System 04/25/16 – 04/27/16	No objection.
PX-018	Medical records form Northwest Texas Healthcare System 04/25/16 – 04/27/16	No objection.

PX-019	Diagnostic Imaging Films from Northwest Texas Healthcare System 04/25/16 – 04/27/16	No objection.
PX-020	Billing records from Maple Valley Physical Therapy 07/04/16 – 09/02/16	No objection.
PX-021	Medical records from Maple Valley Physical Therapy 07/04/16 – 09/02/16	No objection.
PX-022	Billing records from Dartmouth-Hitchcock Medical Center 06/15/16 – 12/24/18	No objection.
PX-023	Billing records from Dartmouth-Hitchcock Medical Center 12/25/18 – 07/19/19	No objection.
PX-024	Medical records from Dartmouth-Hitchcock Medical Center 08/30/16 – 12/24/18	Defendant objects on the basis that this exhibit along with exhibits PX-025 & PX-026 are not the complete medical record as it excludes records from 04/24/16 – 02/04/19. Defendant will withdraw this objection when the Plaintiff represents that he will use the entire medical record from Dartmouth-Hitchcock Medical Center.
PX-025	Medical records from Dartmouth-Hitchcock Medical Center 12/24/18 – 06/03/19	Defendant objects on the basis that this exhibit along with exhibits PX-024 & PX-026 are not the complete medical record as it excludes records from 04/24/16 – 02/04/19. Defendant will withdraw this objection when the Plaintiff represents that he will use the entire medical record from Dartmouth-Hitchcock Medical Center.
PX-026	Medical records from Dartmouth-Hitchcock Medical Center 03/04/19 – 06/13/19	Defendant objects on the basis that this exhibit along with exhibits PX-024 & PX-025 are not the complete medical record as it excludes records from 04/24/16 – 02/04/19. Defendant will withdraw this objection when the Plaintiff represents that he will use the entire medical record from Dartmouth-Hitchcock Medical Center.
PX-027	Diagnostic Imaging Films from Dartmouth Hitchcock Medical Center 12/19/18 –	Defendant objects on the basis that this exhibit along with exhibit PX-028 are not the complete medical record as it excludes

	12/24/18	records from 04/24/16 – 02/04/19. Defendant will withdraw this objection when the Plaintiff represents that he will use the entire medical record from Dartmouth-Hitchcock Medical Center.
PX-028	Diagnostic Imaging Films from Dartmouth Hitchcock Medical Center 12/19/18 – 12/24/18	Defendant objects on the basis that this exhibit along with exhibit PX-027 are not the complete medical record as it excludes records from 04/24/16 – 02/04/19. Defendant will withdraw this objection when the Plaintiff represents that he will use the entire medical record from Dartmouth-Hitchcock Medical Center.
PX-029	Billing records from Doctors Professional Services 05/13/17 – 06/30/18	No objection.
PX-030	Medical records from Doctors Professional Services 05/13/17 – 06/30/18	No objection.
PX-031	Medical records from Doctors Professional Services 07/13/18 – 09/25/19	No objection.
PX-032	Billing records from Psychiatry and Behavioral Health at Lebanon 03/14/19	No objection.
PX-033	Medical records from Psychiatry and Behavioral Health at Lebanon 03/14/19	No objection.
PX-034	Diagnostic Imaging Films from Behavioral Health at Lebanon 04/24/16 – 12/19/18	No objection.
<u>Plaintiff's Life Care Plan/Expert Material</u>		
PX-035	Preliminary Rehabilitation Evaluation and Plan of Rodney Isom, PhD, CRC	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-036	Preliminary Life Care Plan of Rodney Isom, PhD, CRC	Objection. Hearsay, Rule 802, Federal Rules of Evidence.

PX-037	Curriculum Vitae of Rodney Isom, PhD, CRC	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
<u>Deposition Exhibits</u>		
PX-038	Exhibit 2 to the 04/24/20 deposition of Charles Batt, MD(CV)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-039	Exhibit 3 to the 4/24/20 deposition of Charles Batt, MD (Psychiatric Evaluation, 05/26/17 – 06/20/17)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-040	Exhibit 4 to the 04/24/20 deposition of Charles Batt, MD (BATT00033 – 00126)	Defendant objects to Exhibit 4 attached to the deposition of Dr. Batt. It purports to be his medical record but also contains his report generated for litigation purposes. Defendant has no objection to the handwritten notes but does object to the typewritten report.
PX-041	Exhibit 5 to the 4/24/20 deposition of Charles Batt, MD (BATT00127 – 00172)	No objection except for Bates Nos. BATT00157, BATT00159, BATT00161, BATT00163, BATT00165, BATT00169 and BATT00171, as the same constitutes a report in the guise of a medical record and is hearsay pursuant to Rule 802, Federal Rules of Evidence.
PX-042	Exhibit 6 to the 4/24/20 deposition of Charles Batt, MD (BATT00173 - 00174)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-043	Exhibit 7 to the 4/24/20 deposition of Charles Batt, MD (BATT00017 - 00176)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-044	Exhibit 8 to the 4/24/20 deposition of Charles Batt, MD (BATT00177 - 00178)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-045	Exhibit 9 to the 4/24/20 deposition of Charles Batt, MD (Rehabilitation and Life Care Plan, Dr. Burke)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-046	Exhibit 11 to the 4/24/20 deposition of Charles Batt, MD (Correspondence with Dr. Batt)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-047	Exhibit 12 to the 4/24/20 deposition of Charles Batt, MD (Articles provided by Batt)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence

		under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-048	Exhibit 13 to the 4/24/20 deposition of Charles Batt, MD (Billing Statements)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-049	Exhibit 14 to the 4/24/20 deposition of Charles Batt, MD (List of Testimony given by Dr. Batt)	Objection, Hearsay. Rule 802, Federal Rules of Evidence. Defendant objects as there is no Exhibit 14 attached to Dr. Batt's deposition.
PX-050	Exhibit 15 to the 4/24/20 deposition of Charles Batt, MD (Visual Aid)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-051	Exhibit 16 to the 4/24/20 deposition of Charles Batt, MD (Life Care Plan of Dr. Isom)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-052	Exhibit 17 to the 4/24/20 deposition of Charles Batt, MD (Psychiatric Evaluation with Addendum)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-053	Exhibit 18 to the 4/24/20 deposition of Charles Batt, MD (Transcranial Magnetic Stimulation Articles)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-054	Exhibit 19 to the 4/24/20 deposition of Charles Batt, MD (Medical records excluding Northwest Texas)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-055	Exhibit 2 to the 9/26/19 deposition of Ingeborg Clark (Notes)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-056	Exhibit 3 to the 9/26/19 deposition of Ingeborg Clark (Calendar Dates)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-057	Exhibit 3A to the 9/26/19 deposition of Ingeborg Clark (Calendar Dates)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-058	Exhibit 4 to the 9/26/19 deposition of Ingeborg Clark (Notes/Emails)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-059	Exhibit 5 to the 9/26/19	Objection. Hearsay, Rule 802, Federal Rules

	deposition of Ingeborg Clark (Notes/Emails)	of Evidence.
PX-060	Exhibit 2 to the 07/23/19 Deposition of Werner Karl Hegemann (12 photos)	No objection.
PX-061	Exhibit 2 to the 08/04/20 deposition of Rodney Isom, PhD, CRC	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-062	Exhibit 3 to the 08/03/20 deposition of Raymond Martin, MD (Correspondence)	No objection.
PX-063	Exhibit 4 to the 08/03/20 deposition of Raymond Martin, MD (Invoices)	No objection.
PX-064	Exhibit 5 to the 08/03/20 deposition of Raymond Martin, MD (Trial Testimony List)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-065	Exhibit 6 to the 08/03/20 deposition of Raymond Martin, MD (Martin Article 1)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-066	Exhibit 7 to the 08/03/20 deposition of Raymond Martin, MD (Martin Article 2)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-067	Exhibit 8 to the 08/03/20 deposition of Raymond Martin, MD (Mild Traumatic Brain Injury)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-068	Exhibit 9 to the 08/03/20 deposition of Raymond Martin, MD (Outcome of mTBI and cmTBI)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules

		of Evidence.
PX-069	Exhibit 10 to the 08/03/20 deposition of Raymond Martin, MD (Mood Disorders After TBI)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-070	Exhibit 11 to the 08/03/20 deposition of Raymond Martin, MD (rTMS Does Not Improve Cognitive Function in TBI)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-071	Exhibit 12 to the 08/03/20 deposition of Raymond Martin, MD (M&M's 4 th Supplemental 26(a)(2) Disclosures)	No objection.
PX-072	Exhibit 13 to the 08/03/20 deposition of Raymond Martin, MD (CV)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-073	Exhibit 14 to the 08/03/20 deposition of Raymond Martin, MD (Martin Report 1)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-074	Exhibit 15 to the 08/03/20 deposition of Raymond Martin, MD (Martin Report 2)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-075	Exhibit 16 to the 08/03/20 deposition of Raymond Martin, MD (Rodney Isom's Life Care Plan)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-076	Exhibit 2 to the 04/29/19 deposition of Robert Roth, PhD (CV)	No objection.
PX-077	Exhibit 3 to the 04/29/19 deposition of Robert Roth, PhD (03/14/19 Neuropsychological Evaluation)	No objection.
PX-078	Exhibit 2 to the 07/31/20 deposition of Steven C. Schneider, PhD (CV)	No objection.

PX-079	Exhibit 3 to the 07/31/20 deposition of Steven C. Schneider, PhD (Correspondence)	No objection.
PX-080	Exhibit 4 to the 07/31/20 deposition of Steven C. Schneider, PhD (Invoices)	No objection.
PX-081	Exhibit 5 to the 07/31/20 deposition of Steven C. Schneider, PhD (05/17/19 Report)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-082	Exhibit 6 to the 07/31/20 deposition of Steven C. Schneider, PhD (07/16/20 Report)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-083	Exhibit 7 to the 07/31/20 deposition of Steven C. Schneider, PhD (Robert Roth's Report)	No objection.
PX-084	Exhibit 8 to the 07/31/20 deposition of Steven C. Schneider, PhD (Rodney Isom's Report)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-085	Exhibit 9 to the 07/31/20 deposition of Steven C. Schneider, PhD (Rodney Isom's Life Care Plan)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-086	Exhibit 10 to the 07/31/20 deposition of Steven C. Schneider, PhD (Invoice)	No objection.
PX-087	Exhibit 1 to the 11/05/19 deposition of Vijay Thadani, MD (CV)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-088	Exhibit 2 to the 11/05/19 deposition of Vijay Thadani, MD (Hegemann Report)	No objection.
PX-089	Exhibit 3 to the 11/05/19 deposition of Vijay Thadani, MD (CT Reports)	No objection.
PX-090	Exhibit 4 to the 11/05/19 deposition of Vijay Thadani, MD (Medical Visual)	Objection, Hearsay. Rule 802, Federal Rules of Evidence. For use as a demonstrative only - no objection.
PX-091	Exhibit 5 to the 11/05/19 deposition of Vijay	No objection

	Thadani, MD (MRI Report)	
PX-092	Exhibit 6 to the 11/05/19 deposition of Vijay Thadani, MD (EEG Results)	No objection.
PX-093	Exhibit 7 to the 11/05/19 deposition of Vijay Thadani, MD (Article)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-094	Exhibit 8 to the 11/05/19 deposition of Vijay Thadani, MD (Article)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-095	Exhibit 9 to the 11/05/19 deposition of Vijay Thadani, MD (Neuropsych Evaluation)	No objection.
PX-096	Exhibit 10 to the 11/05/19 deposition of Vijay Thadani, MD (Office Visit)	No objection.
PX-097	Exhibit 11 to the 11/05/19 deposition of Vijay Thadani, MD (Article)	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
PX-098	Exhibit 12 to the 11/05/19 deposition of Vijay Thadani, MD (Martin Report)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-099	Exhibit 13 to the 11/05/19 deposition of Vijay Thadani, MD (Martin Report)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-100	Exhibit 14 to the 11/05/19 deposition of Vijay Thadani, MD (Medical Records)	No objection

PX-101	Exhibit 15 to the 11/05/19 deposition of Vijay Thadani, MD (Medical Records)	No objection.
PX-102	Exhibit 16 to the 11/05/19 deposition of Vijay Thadani, MD (Medical Records)	No objection.
PX-103	Exhibit 17 to the 11/05/19 deposition of Vijay Thadani, MD (VA Chart)	No objection.
PX-104	Exhibit 18 to the 11/05/19 deposition of Vijay Thadani, MD (Document)	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-105	Exhibit 19 to the 11/05/19 deposition of Vijay Thadani, MD (ED Records)	Objection. Duplicative of other exhibits.
PX-106	Exhibit 20 to the 11/05/19 deposition of Vijay Thadani, MD (EMS Records)	No objection
<u>Demonstrative Evidence</u>		
PX-107	Future Cost Analysis Summary for Werner Hegemann	Objection. Hearsay, Rule 802, Federal Rules of Evidence.
PX-108	Summary of Medical Expenses (paid and outstanding)	Objection. Hearsay, Rule 802, Federal Rules of Evidence. Furthermore, Defendant has not seen this document and therefore cannot ascertain whether it complies with Texas law on paid or incurred medical expenses that are recoverable by Plaintiff.

Deposition of Vijay Thadani**Objection**

Page 43, line 9 – 17	Objection, leading. Objection, there is no predicate in the record for the witness providing an opinion.
Page 48, line 2 - 12	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of

	Evidence.
Page 48, line 13 – 19	Objection, leading. Objection, there is no predicate in the record for the witness providing an opinion.
Page 48, line 20 – 25	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
Page 49, line 1 – 3	Objection. Hearsay, Rule 802 Federal Rules of Evidence. Objection, there is no predicate in the record that the article is a reliable authority. Furthermore, Defendant objects to the document being admitted into evidence under Rule 803 (18) (B) of the Federal Rules of Evidence.
Page 50, line 6 – 12	Defendant objects on the basis that the question assumes a fact that is incorrect, argumentative and a sidebar remark.

Defendant objects to the failure of Plaintiff to utilize the following excerpts from Dr. Thadani's deposition. For optional completeness, pursuant to Rule 106 of the Federal Rules of Evidence, Defendant would offer the following excerpts.

Page 50, line 25 – Page 51, line 1 – 22	
Page 51, line 23 – Page 52, line 1 - 8	
Page 53, line 11 – 25	
Page 54, line 1 – 9	
Page 55, line 24 – Page 56, line 1	
Page 61, line 3 - 14	

WHEREFORE, PREMISES CONSIDERED, Defendant prays that these objections and requests be sustained and for further and general relief.

Respectfully submitted,

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By /s/ Thomas D. Farris
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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2020, the foregoing document was electronically served on the following:

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